

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

<b>RME Illinois, LLC</b>	:	
	:	
<b>Petition for Issuance of Certificate of Public</b>	:	
<b>Convenience and Necessity to Provide Onsite</b>	:	<b>07-0331</b>
<b>Wastewater, Collection and Dispersal Services</b>	:	
<b>to a Parcel in Lake Villa ,</b>	:	
<b>Lake County, Illinois Pursuant to Section 8-406</b>	:	
<b>of the Illinois Public Utilities Act.</b>	:	<b>(Consol.)</b>
	:	
<b>RME Illinois, LLC</b>	:	
	:	
<b>Petition for Issuance of Certificate of Public</b>	:	
<b>Convenience and Necessity to Provide Onsite</b>	:	<b>07-0332</b>
<b>Wastewater, Collection and Dispersal Services</b>	:	
<b>to a Parcel in Long Grove,</b>	:	
<b>Lake County, Illinois Pursuant to Section 8-406</b>	:	
<b>of the Illinois Public Utilities Act.</b>	:	

**ORDER**

By the Commission:

**I. PROCEDURAL HISTORY**

On May 23, 2007, RME Illinois, LLC (“Petitioner” or “RME”) filed petitions for Certificates of Public Convenience and Necessity pursuant to Section 8-406 of the Public Utilities Act (220 ILCS 5/8-406) (“the Act”) in Dockets 07-0331 and 07-0332 to provide onsite wastewater, collection and dispersal services to the Falcon Crest subdivision in Lake Villa, Lake County, Illinois and to the Eastgate Estates subdivision in Long Grove, Lake County, Illinois, respectively. A map disclosing the location of each subdivision is shown on Revised Exhibit A to the petition in each Docket and a legal description of each subdivision is contained on Exhibit B to the petition in each Docket. Staff’s motion to consolidate these dockets was granted on December 10, 2007.

Each docket was initially set for a pre-hearing conference on June 26, 2007. This matter was continued for status sessions on July 26, August 9, August 28, September 18, October 10, October 30 and December 18, 2007, and January 31, 2008. Thereafter, pursuant to notice as required by law and the rules and regulations of the Commission, this matter was set for hearing by a duly authorized Administrative Law Judge of the Commission at its offices in Chicago, Illinois, on February 21, 2008.

Petitioner appeared pro se and submitted the direct testimony of Arthur R. Olson (Exh. 1.0), a managing member of RME, Mr. Olson's supplemental direct testimony (Exh. 1.0.1), Mr. Olson's rebuttal testimony (Exhs. RB-1 and RB-3) to Staff direct and Staff rebuttal testimony and Mr. Olson's supplemental rebuttal testimony to Staff supplemental rebuttal testimony (Exh. RB-4). Petitioner also furnished the rebuttal testimony of Kurt Vietinghoff (Exh. RB-2), a Certified Public Accountant "CPA", to Staff direct testimony,

Staff filed the direct testimony of William Marr, Financial Analysis Division (Exh. 1.0 and Attachment 1.01 ) and affidavit (Exh. 1.1), Rochelle Phipps, Financial Analysis Division (Exh. 2.0), Theresa Ebrey, Financial Analysis Division (Exh. 3.0 and schedules 3.1-3.14), Mike Luth, Financial Analysis Division (Exh. 4.0), Luth rebuttal (Exh. 5.0), schedule (Exh. 5.1) and affidavit (Exh. 5.2), Phipps rebuttal (Exh. 6.0), Ebrey rebuttal (Exh. 7.0 and Attachments A and B) and affidavit (Exh 7.1), and Phipps supplemental rebuttal (Exh. 8.0) and affidavit (Exh. 8.1). Petitioner's and Staff's exhibits were admitted into evidence. At the conclusion of the hearing on February 21, the record was marked "Heard and Taken."

## II. APPLICABLE STATUTORY AUTHORITY

§ 220 ILCS 5/8-406 governs issuance of a Certificate of Public Convenience and Necessity and states in relevant part:

- (a) No public utility not owning any city or village franchise nor engaged in performing any public service or in furnishing any product or commodity within this State as of July 1, 1921 and not possessing a certificate of public convenience and necessity from the Illinois Commerce Commission, the State Public Utilities Commission or the Public Utilities Commission, at the time this amendatory Act of 1985 goes into effect, shall transact any business in this State until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business.
- (b) No public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facility or any extension or alteration thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction. Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto, it shall have the power to issue certificates of public convenience and necessity. The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility

demonstrates: (1) that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers; (2) that the utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (3) that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

### III. POSITIONS OF THE PARTIES

#### A. Petitioner Position

Petitioner asserted that certain matters in this docket are not in dispute. Construction of the proposed wastewater systems is necessary to provide adequate, reliable and efficient service to the proposed areas. Mr. Olson testified that there are no existing public utilities or municipality sewer systems for which connection is feasible. Petitioner's proposed construction is the least-cost means of satisfying the wastewater needs of the customers in each development. Petitioner is capable of efficiently managing and supervising the construction necessary to provide wastewater service to the proposed areas and Petitioner has the technical and managerial ability to construct, own, operate and maintain wastewater systems to provide services to these areas.

Petitioner also stated that Staff recommended that Petitioner's proposed certificated service areas, shown as Revised Exhibit A and legally described in Exhibit B, be approved and that the areas are necessary and properly defined. Petitioner has a need for certificates to provide wastewater service to Falcon Crest and Eastgate Estates. Petitioner asserted that Staff recommended that the Commission approve Petitioner's proposed Rules, Regulations and Conditions of Service tariffs for sewer service and order Petitioner to file the tariffs within ten days of the final order, with an effective date of not less than five business days after the date of filing, for service rendered on and after the effective date, with individual tariff sheets to be corrected within that time period, if necessary.

Mr. Olson provided a fully detailed description of the wastewater systems to be installed, including 2-inch diameter sewer mains. He testified that as a result of environmental and historical studies, there were no significant historical, architectural or archaeological resources located within the proposed developments. He also stated that no easements were necessary, because the entire sewer system would be contained within the developments. Additionally, no permits were needed, except that Petitioner filed a Class V Injection Well inventory form with the Illinois Environmental Protection Agency ("IEPA") on March 1, 2007. Mr. Olson further testified to Petitioner's experience in constructing wastewater systems in Illinois and other states.

Petitioner agreed with Staff's recommended level of investment of \$465,388 for Falcon Crest and \$172,508 for Eastgate Estates. Petitioner also agreed with Staff that, for monthly service, Falcon Crest customers should pay \$166.56 and Eastgate Estate customers should pay \$263.19. Petitioner added that a summary of Annual Operating Expenses attached to Mr. Olsen's testimony was marked 1.0.1-C and 1.0.1-D and a revenue requirement schedule is included as Revised Attachment 5 to the original petition.

Petitioner agreed with Staff's recommendation that the Commission approve Staff's proposed Revenue Requirements as shown on Schedules 3.01 – 3.13 (FC) and Schedules 3.01 – 3.13 (EE); approve the proposed accounting journal entries to record the projected original cost of each wastewater system as shown on Schedules 3.14 (FC) and 3.14 (EE); direct Petitioner to file with the Chief Clerk of the Commission, with a copy to the Manager of the Accounting Department, copies of actual accounting journal entries used to record the wastewater systems within six months of closing the transactions; and if the transactions have not occurred within six months of the date of this Order, Petitioner should file a report regarding the status of the transaction within six months of the date of this Order and every six months thereafter until the actual journal entries have been filed with the Commission; require Petitioner to file financial information to the Chief Clerk's office, with a copy to the Manager of Accounting, by March 31 and September 30 of each year until rates are set in a rate proceeding; and recommend that Petitioner retain the services of a Certified Public Accountant ("CPA") familiar with public utility regulation to set up Petitioner's books and advise Petitioner on matters of reporting to the Commission.

Petitioner accepted Staff's recommendation that it should file a compliance report with the Office of the Chief Clerk and with the Manager of the Finance Department no later than ten business days after establishing the escrow account for each wastewater system. The escrow account should be established no later than the date on which Petitioner commences construction. The report should include: 1) a copy of the escrow account agreement; 2) the name of each person or entity who contributed to the account; 3) the dollar amount each person or entity contributed to the account; 4) a description of each condition attached to the funds in escrow; and 5) the date on which Petitioner begins construction. Until Petitioner files the compliance report, the Commission should require Petitioner to file status reports on March 31, June 30, September 30 and December 31 with verification that Petitioner has not established an escrow account and has not begun construction.

Petitioner also accepted Staff's recommendation that it should file a compliance report with the Office of the Chief Clerk and with the Manager of the Finance Department no later than ten business days after establishing the line of credit. The line of credit should be established no later than the date on which Petitioner renders service to its first customer. The report should include: 1) a copy of the agreement; 2) the dollar amount of the line of credit; 3) a description of each condition attached to the line of credit; and 4) the date on which Petitioner begins providing utility service to its first customer. The Commission should require Petitioner to file reports on March 31,

June 30, September 30 and December 31 of each year Petitioner has not established the line of credit, with verification that Petitioner has not established the line of credit and has not begun providing utility service to its first customer.

Mr. Vietinghoff testified that he is a Partner and CPA with the accounting firm of Coleman Joseph Blitstein and Stuart, LLC. He testified that Petitioner has retained his firm to set up its books and advise Petitioner on matters of reporting to the Commission, and that he would be the lead CPA in this regard.

#### B. Staff Position

Staff stated that Petitioner's proposed construction of the wastewater systems is necessary to provide adequate, reliable and efficient sewer service to 44 single family residences in the Falcon Crest subdivision and nine single-family residences in the Eastgate Estates development. The wastewater systems will have sufficient capacity to meet the estimated customer demand without construction of additional sewer facilities. Staff also stated that Petitioner's proposed construction constitutes the least-cost means of satisfying the wastewater needs of customers within the proposed areas.

Staff stated that Petitioner is also capable of efficiently managing and supervising construction necessary to provide wastewater service in the proposed areas. Staff concluded that Petitioner has demonstrated a need for the requested certificates and had met the requirements of Section 8-406(b)(1) and (2) of the Act.

Staff evaluated Petitioner's financial ability to construct, operate and maintain onsite wastewater, collection and dispersal services to each area without significant adverse financial consequences for the utility or its customers pursuant to Section 8-406(b)(3) of the Act and recommended a 9.7 % rate of return on rate base for Petitioner. Staff's cost of capital recommendation for Petitioner is comprised of 1) a capital structure for a hypothetical water utility that is financed equally with debt and equity, which approximates the average capital structure for the water utility industry as a whole; 2) a 12% rate of return on common equity, based on a cost of equity analysis for a publicly traded water utility, plus a liquid premium; and 3) a 7.4% cost of debt, equal to the actual cost of indebtedness for another small sewer company.

Staff recommended that Petitioner invest \$465,388 in Falcon Crest's wastewater system and \$172,508 in Eastgate Estates' wastewater system. Staff also recommended that Petitioner demonstrate that it is capable of funding the total recommended level of investment, \$637,896, without significant adverse financial consequences for the utility or its customers pursuant to Section 8-406(b)(3) of the Act. Staff noted that Petitioner intends to fund the recommended level of investment by establishing an escrow account that would hold capital contributions that are free from encumbrances, represent equity in the company and are earmarked for public utility purposes only. Staff also said that Petitioner has pledged not to borrow any funds for investment in the proposed construction.

In recommending the amounts Petitioner should invest in its wastewater system for each development, Staff relied upon 83 Ill. Adm. Code 600.370, Service to New Customers, as investment policy, because there are no wastewater systems comparable to Falcon Crest and Eastgate Estates. Part 600.370(a) requires utilities to furnish all backbone plant at its own cost and expense without requiring contributions from developers. The recommended level of investment is the amount Petitioner described as central plant costs, which is what Staff determined is backbone plant for the proposed systems.

Staff stated that it does not object to Petitioner's proposed method of funding construction, however Petitioner has not provided documentation to show that it has done as it proposes and has thus failed to address Staff's concerns regarding adherence to Section 8-406(b)(3) of the Act. Insofar as Petitioner is not an Illinois public utility and has no existing utility operations, retained earnings or revenue, Staff cannot find that Petitioner is capable of funding the recommended level of investment until Petitioner provides supporting data regarding the escrow account and line of credit. Such data is needed to protect customers from potential adverse financial consequences and ensure that the escrow account and line of credit satisfy the requirements of 8-406(b)(3) of the Act.

In the absence of a copy of the escrow account agreement that includes contributed capital totaling \$465,388 for Falcon Crest and \$172,508 for Eastgate Estates, Staff recommended that Petitioner provide through testimony the reason it cannot furnish a copy, the name of each person and entity who would contribute capital to the escrow account, the dollar amount to be contributed, a description of each condition attached to the funds held in escrow, the expected date Petitioner will establish the account and the expected date Petitioner will begin construction of the wastewater system.

Staff also recommended that Petitioner obtain a line of credit of at least \$45,000 as a backup source of liquidity to fund unanticipated expenses, since Petitioner's revenue requirement is based exclusively upon assumptions. Borrowing may be necessary if Petitioner incurs higher costs or lower revenues than projected and without a backup source of liquidity, such costs or revenues could result in adverse financial consequences for the Petitioner or its customers. Access to external funds could lessen the impact of such consequences. Staff stated that Petitioner's attempt to alleviate Staff's concerns regarding liquidity by producing two letters of credit was to no avail, since the beneficiary in each letter was the Village of Long Grove. Staff did not believe that Petitioner could draw on the letters to obtain the necessary liquidity.

If Petitioner could not produce a copy of the agreement for the line of credit, Staff recommended that Petitioner explain why it could not, and also furnish a letter of intent from an external lender that would include the name of the lender, each borrower under the line of credit, the dollar amount, a description of each condition attached, the expected date the line of credit is to be established and the expected date service will begin to the first customer. Staff stated that Petitioner failed to provide either the

supporting data or the documentation requested if the supporting data was not made available, and also failed to explain why it had not established an escrow account or a line of credit. Consequently, Staff cannot find that Petitioner has demonstrated that it is capable of financing the proposed construction without significant adverse financial consequences for itself or its customers.

Staff stated in the alternative that, if the Commission were to find that Petitioner had demonstrated compliance with Section 8-406(b)(3) of the Act, it recommended that the Commission require Petitioner to provide the supporting documentation in compliance filings. Staff explained that requiring compliance reports would provide the Commission with data on the escrow account and the line of credit and enable the Commission to review the terms of each account. Staff added that the compliance report should be filed with the Chief Clerk and the Manager of the Finance Department within ten business days of the establishment of the escrow account and the escrow account should be established no later than the date on which Petitioner begins construction of the wastewater system. Furthermore, the compliance report should be filed under this Docket and contain a copy of the escrow agreement, the identity of each person or entity who contributed capital to the account, the dollar amount each person or entity contributed to the account, a description of each condition attached to the funds in the account and the date on which Petitioner begins construction. The compliance report should also contain verification from Mr. Olson.

A compliance report should also be filed under Docket 07-0331/0332 (Consol.) with the Chief Clerk's office and the Manager of the Finance Department within ten business days of the establishment of the line of credit, which line of credit should be established no later than the date on which the Company provides utility service to its first customer. The compliance report should include a copy of the agreement, the dollar amount of the line of credit, a description of each condition attached to borrowing under the line of credit and the date that Petitioner provides utility service to its first customer. The compliance report should also contain a verification from Mr. Olson.

Staff recommended that if the certificates are granted, the Commission require Petitioner to file status reports for both the escrow account and the line of credit on March 31, June 30, September 30 and December 31 of each year. The status report for the escrow account should include verifications by Mr. Olson stating that Petitioner has not established the escrow account and the utility has not begun construction of the wastewater systems. The status report for the line of credit should also include verification from Mr. Olson stating that Petitioner has not established the line of credit and it is not providing utility service to any customers. Staff finally recommended that if the certificates are granted, the Commission should accept Staff's recommendation regarding the date that the escrow account is opened and reject Mr. Olsen's proposal to meet certain conditions prior to opening the account.

Staff prepared revenue requirement schedules for Falcon Crest and Eastgate Estates because Petitioner's calculations were not presented in the traditional format and also omitted certain components of the cost of service. Staff calculated revenue

requirements for the Commission's consideration using a traditional format and basing the rates on the limited data supplied by Petitioner. Staff was unable to adopt rates already in use, because there is no other wastewater system similar to Falcon Crest or Eastgate Estates in Illinois. Staff's rates were accepted by Petitioner.

Staff also stated that the investment to be made by Petitioner should be credited to Account 131, Cash, of the Uniform System of Accounts for Sewer Utilities Operating in Illinois and the remaining investment contributed by the developer be credited to Account 271, Contributions in Aid of Construction. The entire cost of the sewer system should be debited to the appropriate detailed accounts with the summation of those accounts included in Account 101, Sewer Utility Plant. Staff further recommended that, within six months of closing the transactions, Petitioner file with the Office of the Chief Clerk with a copy to the Manager of Accounting, copies of actual accounting used to record the acquisition of the wastewater system. If the transactions have not occurred within six months, Petitioner should file a status report on the transactions within six months from the date of the Order in this docket and every six months thereafter until the actual journal entries have been filed with the Commission.

Staff recommended that, until the Commission makes a revenue requirement determination in a rate proceeding, Petitioner furnish to the Chief Clerk of the Commission by March 30 and September 30 of each year a copy of the actual financial information pertaining to the wastewater systems. This data should include, but not be limited to, aggregated plant investment, annual revenues, direct expenses, allocated expenses, Contributions in Aid of Construction, and number of customers. The report should also include an explanation of any significant changes in the status of the systems, which would enable the Commission to determine if the rates need to be reassessed. Petitioner agreed with Staff's recommendation to retain the services of a CPA familiar with public utility regulation to set up its books and advise Petitioner on matters of reporting to the Commission.

Staff recommended that, if the Commission grants the Certificates, the Commission approve Petitioner's proposed certificated areas as shown on Revised Exhibit A and legally described in Exhibit B, attached to the petition.

Staff further recommended that, if the Commission grants the certificates, the Commission approve Petitioner's proposed Rules, Regulations and Conditions of Service tariffs for sewer service. These tariffs have been previously approved by the Commission in other docketed proceedings. Staff also recommended that the Commission direct Petitioner to file its tariffs for sewer service within ten days of the date of the final Order, with an effective date of not less than five business days after the date of filing for service rendered on and after the effective date, with individual tariff sheets to be corrected within that time period, if necessary. Petitioner agreed with Staff's recommendations.

Staff verified that the proposed two-inch diameter sewer mains are sized to comply with sound engineering principles in order to meet each development's service



requirements. Staff's determination that the monthly rates for Falcon Crest and Eastgate Estates should be \$166.56 and \$263.19, respectively, are higher than other wastewater rates regulated by the Commission, however Petitioner's service is the only option available to customers of each development. Petitioner agreed with Staff's recommendation and Staff confirmed that developers had been notified by Petitioner of the rates that would be in effect at each development. Staff recommended that, if a certificate is granted, the suggested rates should be in effect at the time service begins.

#### IV. COMMISSION ANALYSIS AND CONCLUSIONS

Petitioner has demonstrated pursuant to Section 8-406(b)(1) of the Act that its proposed construction of wastewater systems for the Falcon Crest and Eastgate Estate developments is necessary to provide adequate, reliable and efficient service to its customers and is the least-cost means of satisfying the service needs of these customers. Petitioner has also demonstrated pursuant to Section 8-406(b)(2) of the Act that it is capable of efficiently managing and supervising the construction process and has taken sufficient measures to ensure that adequate and efficient construction and supervision occurs.

Petitioner has not demonstrated compliance with Section 8-406(b)(3) of the Act. Section 8-406(b)(3) of the Act requires financing "without significant adverse financial consequences for the utility *or its customers*". (emphasis added). Staff's recommended monthly rates (agreed to by Petitioner) for Falcon Crest, \$166.56, and Eastgate Estates, \$263.19, are so high that the Commission finds them to be nothing short of draconian. (Staff Exh. 4 at 3) Staff's recommended rates are precisely the "significant adverse financial consequences" that Section 8-406(b)(3) of the Act prohibits in the financing of proposed construction. Petitioner's inability to capably finance construction of the needed wastewater systems is evidenced by the escrow account and line of credit requirements, as well as the multitude of filings that will subsequently be required. Any adverse financial consequences resulting from Petitioner's insufficient funding would fall squarely upon the customers of Falcon Crest and Eastgate Estates. The proposed wastewater rates are clear evidence of this and they are unacceptable to the Commission.

The Commission considers the proposed rates standing alone to be excessive, but they become magnified when compared to wastewater rates charged by other Commission-regulated utilities at various developments in the same area. Staff's own evidence shows that customers of Aqua Illinois, Inc. at Ivanhoe Country Club in Lake County pay only \$23.97 per month for sewer service. Customers at Eastgate Estates would pay over ten times that amount each month for the same service. Other customers served by Aqua Illinois, Inc. at Hawthorn Woods in Lake County pay \$50.70 per month, while customers at Harbor Ridge Utilities served by Utilities, Inc. in Lake County pay \$43.02 per month and customers of Illinois-American Water Co. in the Chicago area pay \$45.52 per month. Staff's proposed rates, and those cited for the other developments, cover only wastewater treatment and are exclusive of any other utility service. (Staff Exh. 4 at 5-6)

Staff's characterization of the proposed rates as "pricey" and "steep" understates the case. Petitioner's need for such exorbitantly high rates is a direct result of the plant investment necessary and operating expenses for such a small number of customers. These rates are completely out of line with other rates charged for the same service in the same area. Moreover, Staff's admonition to disclose to potential home purchasers the proposed wastewater rates is, in our view, an inadequate remedy to say the least. (Staff Exh. 4 at 5-6) We regard these rates to well exceed the boundaries of affordability and such rates could very likely pose an insurmountable barrier to anyone contemplating the purchase of a home in either the Falcon Crest or Eastgate Estates subdivision. (Staff Exh. 5 at 4) Additionally, the fact that Petitioner is the only source of wastewater service for these developments provides no justification for such incongruous rates. As a result, the Commission finds that Petitioner is not in compliance with that portion of Section 8-406(b)(3) of the Act requiring Petitioner to finance construction of the wastewater systems without significant adverse financial consequences for the utility or its customers. On that basis we conclude that Petitioner's request for Certificates of Public Convenience and Necessity in Dockets 07-0331 and 07-0332 should be denied.

We are aware that Petitioner has fully acquiesced to all of the financial undertakings proposed by Staff and outlined in the prefatory portion of this Order. The Commission has determined, however, that despite Petitioner's willingness to adhere to the various requirements set forth, an unequivocal basis exists for the denial of the requested certificates in Dockets 07-0331 and 07-0332. For that reason, we consider it unnecessary to analyze any of the other matters that were raised in these dockets.

## V. EXCEPTIONS

### A. Petitioner

Petitioner stated that it relied upon Staff testimony to set the rates to be charged at each development, but believes that the structure recommended by Staff may result in excessive rates. (Petitioner BOE at 2). Petitioner argued that the appropriate level of investment for Falcon Crest should be the proposed purchase price of \$85,300 and the appropriate level of investment for Eastgate Estates should be the proposed purchase price of \$31,600. (Petitioner RBOE at 1). Petitioner proposes a monthly rate for Falcon Crest of \$60.66 and a monthly rate for Eastgate Estates of \$78.58. (Petitioner BOE at 2, RBOE at 2). Such levels of investment are consistent with the levels of investment based on discounted purchase prices of other wastewater systems in Lake County. (Petitioner RBOE at 2).

### B. Staff

Staff stated that Petitioner argued for the first time in its Brief on Exceptions that the structure recommended by Staff may result in excessive rates. Petitioner failed to present any evidence regarding the rates it should charge residents at each development. The record reflects that Petitioner agreed with Staff that the monthly rate for Falcon Crest customers should be \$166.56 and the monthly rate for Eastgate

customers should be \$263.19. Petitioner did not, in its exceptions, address the Proposed Order's reflection of its position on appropriate rates for each development and the ALJ made no findings regarding what rates should be charged. Petitioner is improperly attempting to present, through its BOE, new evidence as to what rates should be charged. Also, Petitioner's Motion for Leave to Hold Additional Hearings to File Post Record Data contains an attachment for proposed rates for each subdivision. This does not constitute evidence in this proceeding. (Staff RBOE at 2). Further, there is no evidentiary support for the \$60.66 and \$78.58 monthly rates Petitioner proposes to charge, only its concurrence with Staff's recommended rates stated above. (Id. at 3).

Staff additionally asserted that Petitioner's arguments are procedurally deficient. Those portions of Petitioner's BOE that inaccurately cite the Proposed Order or fail to cite facts in the record should be stricken, pursuant to 83 Ill. Adm. Code 200.830(e) ("Statements of fact in briefs on exception and replies to briefs on exception should be supported by citation to the record."). Petitioner also failed to comply with the provisions of Part 200.830(b) that require exceptions and replies thereto to be specific and stated and numbered separately in the brief, and where exception is taken to a statement or finding of fact, a suggested replacement statement or finding must be incorporated. Petitioner's BOE contains no replacement language. Since a notice accompanied the Proposed Order stating that substitute language was required or the brief would be stricken, Petitioner's BOE must be stricken. (Staff RBOE at 3-4).

## VI. PETITIONER'S MOTION FOR LEAVE TO HOLD ADDITIONAL HEARINGS TO FILE POST RECORD DATA

### A. Petitioner Position

Petitioner moved, pursuant to 83 Ill. Adm. Code 200.870, for additional hearings in order to submit supplemental evidence pertaining to the monthly rates to be charged by Falcon Crest and Eastgate Estates. Petitioner cited, among other provisions, 83 Ill. Adm. Code 200.875(a) and (b), which states that the ALJ may direct any party to provide calculations and other numerical analyses of data related to evidence already in the record or the rate levels or rates structures being considered by the Commission, and where such calculations are necessary for the Commission to determine final rate levels or rate structures. All calculations and analyses requested shall be to determine final rate levels or rate structures and for no other purpose.

Petitioner argued that in consolidated Dockets 03-0455 and 03-0550 ("Hawthorn Woods"), the rate base used was the cost paid by the utility for backbone plant, not the cost of construction of the sewer facilities by the developer. In Docket 00-0366 ("Ivanhoe Club"), the rates used were based on rates charged by the Village of Mundelein, not rates determined by standard ratemaking methodology. In Docket 04-0374 ("Harbor Ridge"), the utility provided only the sewer lines to connect to the sanitary interceptor sewer operated by Lake County; it did not provide sewage treatment. The utility had passed Lake County's sewage treatment costs on to its customers. (Motion at 2). Petitioner asserted that the Hawthorn Woods methodology would provide much lower customer rates, since the developers in this Docket are willing to accept the same

negotiated rate of 18.33% of the construction price. The resulting wastewater rates would be \$60.66 per month for Falcon Crest and \$78.58 per month for Eastgate Estates. Petitioner maintained that if it were allowed to introduce certain post-record data, rates could be established at more acceptable levels.

Petitioner refuted Staff's assertion that RME never presented evidence regarding what rates it would charge to potential customers, when in fact the record reflects that Petitioner proposed a rate of \$74.62 in Attachment 5 to the Petition. This figure was later adjusted to \$99.13 in Revised Attachment 5, based upon Staff requiring a higher rate base.

Petitioner concluded that it has met the requirements of Parts 200.870 and 200.875 and that Part 200.875 allows the inclusion of data into the record if it is related to evidence already admitted. Moreover, such data can be allowed if necessary for the Commission to determine final rate levels or rate structures.

#### B. Staff Position

Staff stated that Petitioner has failed to show that it has met the standard required in either Section for an additional hearing or to provide additional data. Part 200.870 mandates that Petitioner demonstrate material changes of fact or law, state briefly what additional evidence is to be offered and explain why such evidence was not previously adduced. Petitioner's motion fails to cite any material changes of fact or law and fails to explain why that evidence was not presented at hearing.

Staff also argued that under Part 200.875, only the Administrative Law Judge on his or her own motion, or when directed by the Commission, can direct parties to provide calculations and numerical analyses related to evidence already in the record. Petitioner cannot initiate such a motion.

Staff further argues that Petitioner's attempt to inject new rates into this proceeding is inappropriate, since they are not part of the record. The record in this Docket reflects that Petitioner agreed with Staff's proposed rates for each project. Staff also notes that Petitioner's attempt to take issue with Mr. Marr's testimony regarding the level of investment required ignores the fact that Petitioner agreed with Mr. Marr as well.

#### VII. COMMISSION ANALYSIS AND CONCLUSIONS REGARDING EXCEPTIONS AND PETITIONER'S MOTION FOR LEAVE TO HOLD ADDITIONAL HEARINGS

Petitioner in its Exceptions attempts to introduce into the record data that was not previously offered, but fails to explain in either its Motion or its Exceptions why such evidence was not previously adduced. For this reason alone, Petitioner's motion fails to satisfy Part 200.870. We add that Staff correctly points out that the new monthly rates offered by Petitioner have no evidentiary basis, since the calculations underlying these figures were never offered into evidence. Insofar as the data tendered by Petitioner in its Exceptions cannot be considered as evidence, it has failed to cite any material

changes of fact or law. This provides an additional basis under Part 200.870 to deny the motion. Any supplementary data or numerical analyses related to the new rates proposed by Petitioner and contemplated by Part 200.875 are precluded by Petitioner's failure to establish a proper foundation for reopening the record under Part 200.870. Petitioner's Motion for Leave to Hold Additional Hearings to File Post Record Data is denied. That leaves us with the monthly figures Staff originally calculated and with which Petitioner agreed. We have already rejected these rates as far too high to satisfy the "significant adverse financial consequences" language of Section 8-406(b)(3) of the Act.

#### VIII. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) RME Illinois, LLC has petitioned for Certificates of Public Convenience and Necessity to construct wastewater systems and provide wastewater services to 44 units in the Falcon Crest development in Lake Villa, Lake County, Illinois under Docket 07-0331 and to 9 units in the Eastgate Estates development in Long Grove, Lake County, Illinois under Docket 07-0332;
- (2) the Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (3) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (4) the Certificates of Public Convenience and Necessity requested for Falcon Crest in Lake Villa, Lake County, Illinois and for Eastgate Estates in Long Grove, Lake County, Illinois are necessary to provide adequate, reliable and efficient utility service to customers, and are the least-cost means of satisfying the service needs of those customers;
- (5) Petitioner is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof;
- (6) Staff proposed, and Petitioner agreed with, monthly wastewater rates of \$166.56 per customer in the Falcon Crest subdivision and \$263.19 per customer in the Eastgate Estates subdivision;

- (7) the proposed rates set forth in Finding (6) are so high that they violate the provisions of Section 8-406(b)(3) of the Act requiring Petitioner to finance construction of the wastewater systems without significant adverse financial consequences for the utility or its customers;
- (8) the petition for a Certificate of Public Convenience and Necessity requested for Falcon Crest in Lake Villa, Lake County, Illinois under Docket 07-0331 should be denied;
- (9) the petition for a Certificate of Public Convenience and Necessity requested for Eastgate Estates in Long Grove, Lake County, Illinois under Docket 07-0332 should be denied.
- (10) Petitioner's Motion for Leave to Hold Additional Hearings to File Post Record Data should be denied.

IT IS THEREFORE ORDERED that the Certificate of Public Convenience and Necessity requested for Falcon Crest in Lake Villa, Lake County, Illinois under Docket 07-0331 is denied.

IT IS FURTHER ORDERED that the Certificate of Public Convenience and Necessity requested for Eastgate Estates in Long Grove, Lake County, Illinois under Docket 07-0332 is denied.

IT IS FURTHER ORDERED that Petitioner's Motion for Leave to Hold Additional Hearings to File Post Record Data is denied.

IT IS FURTHER ORDERED that pursuant to the provisions of Section 10-113 of the Public Utilities Act (220 ILCS 5/10-113) and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 25<sup>th</sup> day of June, 2008.

(SIGNED) CHARLES E. BOX

Chairman